

NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 1984-104
	)	
GOVERNMENT OF THE VIRGIN ISLANDS,	)	
	)	
Defendant.	)	
	)	

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**APPEARANCES :**

**Joycelyn Hewlett, Esq.**  
Assistant United States Attorney  
St. Thomas, U.S.V.I.  
**Donald G. Frankel, Esq.**  
United States Department of Justice  
Washington, D.C.  
*For the plaintiff,*

**Pamela Tepper, Esq.**  
Deputy Solicitor General  
**Michael Law, Esq.**  
Assistant Attorney General  
St. Thomas, U.S.V.I.  
*For the defendant.*

**ORDER**

**WHEREAS** the United States of America filed an emergency motion on February 7, 2000, requesting that the Court require the Government of the Virgin Islands to cease three unlawful bypasses of raw sewage and implement certain repairs at the St. Croix Wastewater Treatment Plant ("St. Croix WWTP"), and

**WHEREAS** the Court had jurisdiction over this request under 33 U.S.C. § 1319(a) and 33 U.S.C. § 1342(h), because the United

States has determined that, despite sincere efforts, the Government of the Virgin Islands has not undertaken appropriate, effective enforcement action to stop the continued bypass and expulsion of raw sewage from those waste management facilities, and others throughout the Virgin Islands, and

**WHEREAS**, after thorough review of the testimony and evidence presented by the parties, the Court has concluded that this raw sewage has polluted Territorial waters, and poses a serious threat to human health and the environment, inflicting irreparable harm upon both, and

**WHEREAS** the Court is aware of the pressing burdens on the Government of the Virgin Islands, but must impel the defendant toward greater efforts to safeguard the health and safety of the people of the Virgin Islands, it is hereby

**ORDERED that the Government of the Virgin Islands, or its agencies as further specified below, shall COMPLETE the following actions within the time periods set forth below:**

**1. Figtree Pump Station**

**a.** By **February 16, 2000**, the Virgin Islands Department of Public Works ("DPW") shall have the pump motors hauled, dried, rewound, and reinstalled. By that date, the pump

station shall be back in operation and the bypass shall be terminated.

b. By **March 31, 2000**, DPW shall remove, recondition and replace the magnetic clutch for pump #1.

c. By **March 31, 2000**, DPW shall install an adequate automatic sump pump in the pump station.

d. By **March 31, 2000**, DPW shall ensure that emergency power is available at the pump station.

## **2. LBJ Pump Station**

a. DPW shall secure the use of tank trucks, and all other equipment necessary for the pumping, emptying, storage, and transport of the approximately 200,000 gallons of raw sewage presently located in the wet and dry wells. The sewage shall be trucked directly to the St. Croix WWTP. DPW shall complete the pumping and emptying of the dry wells by **February 18, 2000**.

b. By **February 18, 2000**, DPW shall repair or replace the defective valve at the pump station; repair the inspection cover through which sewage is flowing into the dry well; install an operational pump system to enable sewage to be pumped, treated, and disposed through the St. Croix WWTP; cease and desist the current bypass and use of

the bypass line located over Long Reef; and complete the repairs and place LBJ back on-line in a fully-functioning, operational mode.

c. DPW shall obtain and install an adequate automatic sump pump by **March 31, 2000**.

d. DPW shall ensure that emergency power is available by **June 1, 2000**.

### **3. Bethlehem Interceptor**

a. DPW shall repair the broken sewer and stop the bypass at this location by **March 17, 2000**.

### **4. St. Croix WWTP**

a. DPW shall implement the following repairs/actions at the plant **as soon as possible**:

i. Implement all repairs needed to ensure that the clarifiers are operating properly;

ii. Rehabilitate the septage receiving station;

iii. Refurbish grit removal mechanisms (until this is achieved, manually remove sand from grit chambers);

iv. Fix the broken mechanical bar screen;

**v.** Repair the emergency generator;

**vi.** Recondition at least 12 of the 24 sludge drying beds and implement a sludge management program;

**vii.** Obtain adequate staffing, operational budget and laboratory services to fulfill the operation and maintenance requirements of the Territorial Pollutant Discharge Elimination System ("TPDES") permit currently in effect.

**b.** DPW shall **immediately** begin proper monitoring at the plant in accordance with its TPDES Permit.

**c.** DPW shall operate the plant subject to the management of a qualified, independent contractor, who shall manage the operation and maintenance of the plant on a day-to-day basis, until six months of compliance with all effluent limits have been achieved.

## **5. Reporting**

**a.** Until such time as **(i)** all of the requirements or projects required by Paragraphs 1 (a - d), 2 (a - d), 3, and 4.a have been completed, **(ii)** the monitoring required by Paragraph 4.b has begun, and **(iii)** the contract operation required by Paragraph 4.c has begun, DPW shall make weekly status reports, setting forth all actions that have been

taken during the prior week to implement the requirements of this Order. These weekly reports shall be filed with the Court, with copies to the Environmental Protection Agency ("EPA"), the Virgin Islands Department of Planning and Natural Resources ("DPNR"), and the Court Monitor.

**b.** Within five days of any additional bypass of sewage at any location in the wastewater treatment systems on St. Croix, St. Thomas, or St. John, DPW shall file a notice of the bypass with the Court, with copies to EPA, DPNR, and the Court Monitor. When the bypass is terminated, DPW shall file a further report with the Court, with copies to EPA, DPNR, and the Court Monitor, indicating when the bypass was terminated, the cause of the bypass, and the steps taken to stop the bypass.

## **6. Public Notification of Bypasses**

**a.** Upon discovery of any additional bypass with a duration greater than eight hours, or with the potential to last greater than eight hours, DPW shall immediately furnish public notification of the bypass every 72 hours, for the entire duration of the bypass, to all Territorial radio and television stations and provide a copy of such notice to all newspapers of general circulation in the U.S. Virgin

Islands. DPW shall also post public advisory signs at all affected shorelines within eight hours of the discovery of the bypass, and shall ensure that such advisory signs remain at those locations for the duration of the bypass event, and for 72 hours thereafter.

**7. Virgin Islands Wastewater Corrective Action Trust Fund**

a. No later than **March 3, 2000**, the Director of the Virgin Islands Public Finance Authority ["PFA"] shall file with the Court, with copies to EPA, DPNR, and the Court Monitor, a report setting forth **(i)** how the Virgin Islands Wastewater Corrective Action Trust Fund ("Trust Fund"), established pursuant to Section XVII of the Amended Decree, was in fact established, **(ii)** whether the Trust Fund is held in trust for the Government of the Virgin Islands for the purposes set forth in Section XVII of the Amended Decree in a separate bank account at the Chase Manhattan Bank, **(iii)** the date and amount of all deposits made to the Trust Fund, **(iv)** the date and amount of all expenditures made from the Trust Fund, including the reason for the expenditures, **(v)** the investment history of the Trust Fund, including the recommendations of the Virgin Islands Office of Management and Budget ["OMB"] and the Department of Finance ["DOF"] for

the money in the Trust Fund, **(vi)** a complete explanation of the process by which disbursements are made from the Trust Fund, including any approvals by agencies of the Government of the Virgin Islands other than DPW, and **(vii)** the current balance of the Trust Fund. The Director of PFA shall attest before a notary public that his report is made under penalty of perjury.

**b.** By **March 17, 2000**, DPW shall obtain from Chase Manhattan Bank, and submit to the Court, with copies to EPA, DPNR, and the Court Monitor, a letter setting forth the nature of the Trust Fund account as well as a bank statement showing all deposits and expenditures from the account.

**c.** By **March 24, 2000**, DPW shall select a firm of certified public accountants to submit the reports required by Section XVII.2 of the Amended Decree. The first such report shall be submitted by the public accountant on or before April 24, 2000, and thereafter within 90 days of the end of each fiscal year (October 1 - September 30) until such time as all monies in the Trust Fund have been expended.

**d.** No later than **March 31, 2000**, the Government of the Virgin Islands, including DPW, OMB, and DOF, shall ensure that the Trust Fund account meets the following

requirements: **(i)** monies in the Trust Fund are held in a separate bank account at the Chase Manhattan Bank in full compliance with the specifications of Section XVII of the Amended Consent Decree, and **(ii)** monies in the Trust Fund shall be released to DPW upon a written request by the Commissioner of DPW, backed up by appropriate invoices or cost estimates, stating that the monies are needed to implement one of the projects set forth at Exhibit I of the Amended Decree--no further approval shall be needed from any other agency of the Virgin Islands Government. Copies of all such requests shall be served upon EPA, DPNR, and the Court Monitor. Upon the receipt of such a request, Chase Manhattan Bank shall release the requested funds to DPW within five days, unless it determines and immediately notifies DPW that the request does not meet the requirements of Section XVII of the Amended Consent Decree. DPW may request monies from the Trust Fund before the provision of services or the acquisition of equipment if the provider of those services or equipment requires advance payment.

**ENTERED this 12<sup>th</sup> day of February, 2000.**

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**FOR THE COURT:**

\_\_\_\_\_/s/\_\_\_\_\_  
**Thomas K. Moore**  
**District Judge**

**ATTEST:**  
**ORINN ARNOLD**  
**Clerk of the Court**

**By:** \_\_\_\_/s/\_\_\_\_\_  
**Deputy Clerk**

**Copies to:**  
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